

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

October 8, 2003
9:00 a.m.

Members present: Councilors Bradley; Butler; Cowan; Densberger; DiMarzio; Frost, Funk; McLeod, Phillips and Varotsis

Members absent: Councilors Bridges and Patenaude, Councilor Flynn or his designee, David Barrett; Councilor Vailas or his designee, Brook Dupee; and Councilor Perry or his designee, William Ingham.

Vacancies: Appointee representing agricultural interests.

Vice Chairman DiMarzio opened the meeting at approximately 9:00 a.m.

- (1) **Approval of Minutes of August 13, 2003 Meeting**
It was moved, seconded and unanimously voted to accept the minutes of the August 13, 2003 meeting as presented.
- **Introduction**
Newly appointed council member, Robert A. Phillips, was introduced to the Council by Richard Flanders of the Wastewater Engineering Bureau. Mr. Phillips serves on the Council as the representative of the New Hampshire Association of Septage Haulers.
- (5) **Discussion of Env-WC 200, Proposed Water Council Procedural Rules**
Attorney Susan Weiss Alexant advised the Council that the proposed rules will be presented at a public hearing on October 23. Public comments will be reviewed and any necessary changes will be made before proceeding to the JLCAR. It was suggested that in Env-WC 203.09, Recess and Adjournment, the word "shall" in the first sentence should be replaced with "may".
- (2) **Approval of State Aid Grants**
Stephen Snell, Wastewater Engineering Bureau, presented a list of municipal projects to receive state aid, as set forth in John Bush's memorandum of September 19, 2003, and recommended Council approval of processing for such payments. After discussion regarding the fund payout schedule and conditions attached to the grants, the following vote was taken:

Councilor Varotsis moved to approve the grants and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Bradley seconded the motion and the vote was unanimous.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486, for grants in the amounts listed to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>Municipality</u>	<u>Proj. No.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Wolfeboro	C-657	Effluent Irrigation System Expansion, Phase I	\$ 9,878.00
Newmarket	C-658	Packers Falls Road & Cedar Street Pumping Station Upgrade	13,945.00
Laconia	C-659	Christmas Island Pumping Station Upgrade	54,473.00
Manchester	C-660	Electric Street CSO Elimination	770,381.00
Nashua	C-661	French Hill Area Sewer Rehabilitation	222,874.00
Hudson	C-662	Infiltration/Inflow Study	26,716.00

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State contributions; and

WHEREAS, The Water Council finds that said projects are intended to control or reduce pollution in the surface waters of the State, as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants, and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services, as provided for in said Chapter.

(3) Appeals Update

- **Docket No. 01-13 WC, Appeal of Lake Ashuelot Estates Association**
Mr. Sclafani distributed a draft of the Decision & Order on the Motion for Reconsideration for review by the Council. A correction was noted and the councilors were requested to contact Vice Chairman DiMarzio telephonically by Monday, October 13, 2003 with their comments or corrections prior to issuance of the Decision & Order.
- **Docket No. 01-20 WC, Appeal of John Dixon, Sunapee**
DES's appeal to the New Hampshire Supreme Court has been accepted. Per order of the Court, a certified record of the Council's file was submitted to the Court on October 2, 2003.
- **Docket No. 02-14 WC, Appeal of Randall Parker**
Mr. Sclafani was advised by Attorney Harbaugh that the settlement agreement has been reduced to writing by DES and is ready to be submitted to the appellants for comment and/or signature. It is expected that the Appellants will file a withdrawal by the Council's next meeting.

A motion was made by Councilor Cowan to extend the stay on the Motion for Reconsideration for an additional month. The motion was seconded and it was unanimously voted.

- **Docket No. 03-09 WC, Appeal of Town of Chester Conservation Commission**

A prehearing conference was scheduled for August 26, 2003 with an appeal hearing scheduled before the Council at the September meeting. On August 27, 2003 Attorney Dean Eggert filed a pre-hearing statement on behalf of the appellant. On August 29, 2003 Attorney Eggert filed an Assented-to Motion to Continue the hearing until the Council's November meeting. Attorney Bernard Campbell filed an appearance on behalf of the applicant, Bryan Remillard, on September 8, 2003 and a Motion to Intervene on behalf of the applicant on September 24, 2003. Attorney Campbell's Motion to Intervene was assented to by Attorney Eggert by document filed with Mr. Sclafani on October 3, 2003. The pre-hearing did not go forward on August 26, 2003.

It was moved, seconded and unanimously voted to grant Attorney Campbell's Motion to Intervene on behalf of applicant, Bryan Remillard.

It was moved, seconded and unanimously voted to schedule a hearing on the Chester Conservation Commission appeal at the Council's December meeting.

- **Docket No. 03-10 WC, Appeal of Conservation Law Foundation**

A petition for appeal was filed by the Conservation Law Foundation on August 18, 2003 appealing the issuance by DES of a Section 401 Water Quality Certificate for the proposed Falls Way Subdivision in Greenland, NH. The petition was timely filed and in conformance with council rules. Attorney Malcolm McNeill filed an appearance on behalf of the applicant on September 10, 2003. On October 2, 2003, Attorney Jennifer Patterson filed an appearance on behalf of DES. A Motion to Stay was filed by Attorney Thomas Irwin on behalf of the Conservation Law Foundation on October 7, 2003 requesting a stay "until such time as it becomes legally relevant." Counsel for the state indicated to Mr. Sclafani that DES is in agreement with the Motion to Stay. Attorney McNeill indicated that he intends to file an objection to the Motion to Stay.

After considerable discussion, regarding issues of standing by the Conservation Law Foundation, issues of legal relevancy, and the effects of delay in acting upon the requests before the Council, it was decided to schedule a hearing on standing at the next Council meeting in November. A request will be made to have Council's legal counsel available for consultation at the hearing on standing.

Councilor Frost made a motion to accept the appeal of the Conservation Law Foundation contingent upon a determination by the Council that the Conservation Law Foundation has standing. It was further moved that if it is determined that the appellant has standing, a hearing on the appeal will go forward immediately after the hearing on standing. Councilor Bradley seconded the motion. It was unanimously voted with Councilor Funk abstaining.

- **Docket No. 03-12 WC USA Springs, Inc. Appeal**

A notice of appeal was filed by USA Springs Inc. on September 11, 2003 along with a Motion to Stay Proceedings on Appeal. The appeal was timely filed and in conformance with the rules. This is an appeal of a denial by DES for approval of a bottled water source. On September 16, 2003, Attorney Richard Head filed an appearance on behalf of DES and an Assented to Motion to Stay Appeal.

Attorney Gregory Smith, who represents USA Springs, Inc., addressed the Council. Attorney Smith indicated that it was necessary to file the appeal at this time to preserve appellant's rights pending proceedings on a Motion for Reconsideration of DES's denial of a large groundwater withdrawal permit. Therefore, USA Springs is requesting that the Council postpone action on this appeal. Rather than an indefinite postponement, Attorney Smith recommended that a status conference be scheduled in three to four months.

Attorney Richard Head, counsel for DES, advised the Council that he expects a decision on the Motion for Reconsideration from DES by mid-November. If either party chooses to appeal that decision, they would have 30 days in which to file an appeal with the Supreme Court. Attorney Head concurred with Attorney Smith that scheduling a status conference in January would be appropriate.

Councilor Densberger made a motion to accept the appeal of USA Springs, Inc. Councilor Bradley seconded the motion and it was unanimously voted.

Councilor Densberger made a motion to stay the appeal and to schedule a status conference at the January 2004 Council meeting. Councilor Bradley seconded the motion and it was unanimously voted.

- **Docket No. 03-14 WC Appeal of Gerald A. Bell**

A notice of appeal was filed on September 18, 2003. Attorney Thomas Hanna filed a Motion to Intervene on behalf of Abutter Richard Cote on October 7, 2003. Mr. Sclafani spoke with Attorney Bentley, counsel for the appellant, who indicated he did not intend to file an objection to the Motion to Intervene by Richard Cote, who is a direct abutter to the proposed project. The notice of appeal is in conformance with the rules and was timely filed.

Councilor Funk made a motion to accept the appeal of Gerald Bell. Councilor McLeod seconded the motion and it was unanimously voted with Councilor Cowan abstaining.

Councilor Densberger moved to grant the Motion to Intervene. The motion was seconded and unanimously voted with Councilor Cowan abstaining.

Mr. Sclafani was directed to schedule the appeal for hearing at the Council's January meeting.

(4) Discussion of Env-Ws 905, Amalgam Management Standards

George Carlson, P.E., of the Wastewater Engineering Bureau, briefed the Council on the proposed Amalgam Management Standards rules. Env-Ws 905 will require dentists to install a device which would trap mercury waste from dental procedures and then dispose of the waste in accordance with Waste Management rules Env-Wm 110. Mr. Carlson indicated that the filtering device would cost under \$1,000 to install and some dentists are already using the device.

A motion was made by Councilor Densberger to support Env-Ws 905 Amalgam Management Standards rules as proposed. Councilor Bradley seconded the motion and it was unanimously voted.

10:00 *Vice Chairman DiMarzio called a brief recess.*

10:05 *The Council reconvened.*

(6) Presentation – Role of DES's Rules in Protecting Water Supply Watersheds

Stephen Densberger of Pennichuck Corporation and Robert Beaurivage, P.E. of Manchester Water Works made a presentation to the Council on efforts by DES and stakeholders to update watershed regulations, which were last updated in the 1920s.

The proposed rules would eliminate archaic language which addressed pollution issues related mainly to agriculture and add language to address more prevalent pollution issues such as hazardous waste and chemical control. The rules will require utilization of Best Management Practices to protect buffers around brooks, streams and ponds which are part of the watershed and improve stormwater management. Another change would seek to minimize human contact with public water supplies and related watersheds to diminish the potential for introduction of viruses and human borne pathogens into the water supplies. The rules will attempt to standardize enforcement at state and local levels.

Mr. Densberger explained that Pennichuck Corporation provides drinking water for 22 southern New Hampshire and northern Massachusetts communities. The Pennichuck watershed is primarily urban and one of the most detrimental sources of pollution is stormwater runoff from impervious surfaces around the watershed. In 1998 Pennichuck Corporation developed a watershed management plan to assess current problem areas and to seek opportunities to work with local communities in developing standards to avert pollution problems as communities expand.

Mr. Beaurivage explained Manchester Water Works is performing a major upgrade of its Lake Massabesic water treatment facility. The upgrade includes installing new filters, increasing the plant's capacity from 30 to 40 mgd, and making provisions for new primary and secondary disinfection systems. Unlike Pennichuck, Lake Massabesic's watershed is primarily rural, incorporates over 100 miles of hiking trails and has many recreational uses.

Mr. Beaurivage stressed the importance of increased security procedures for public water supplies in light of terrorism threats.

The differences in the systems and how they approach watershed use issues illustrate the need to tailor watershed regulations to each individual source.

(7) **Legislation**

Russ Nylander, P.E. briefly discussed summaries of the 2003 legislation pertinent to DES. Councilor Bradley requested an update on the status of SB 115. Harry Stewart, Water Division Director, advised that SB 115 was enacted and development of e-permitting is underway, although it has been set back a couple of months because of continuing resolutions associated with the state budget.

(8) **Other Business**

Councilor Butler requested an update on the status of the TMDL report for the Contoocook River. Mr. Stewart will research the issue and report back to Councilor Butler.

Councilor Cowan suggested that the Council avoid cancellation of meetings and the postponement of scheduled hearings whenever possible.

(9) **Next Meeting**

The next meeting will be November 12, 2003.

(10) **Adjournment**

The meeting adjourned at approximately 11:05 a.m.